

D965

Bennett, Giuliano, McDonnell & Perrone, LLP
Attorneys for Plaintiff
Vinik Marine, Inc.
494 Eighth Avenue, 7th Floor
New York, New York 10001
Telephone: (646) 328-0120
Facsimile: (646) 328-0121
William R. Bennett, III (WB 1383)
wbennett@bgmplaw.com

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

-----X
VINIK MARINE, INC.,

10-CV

Plaintiffs,

-against-

COMPLAINT

IRONHEAD MARINE, INC.,

Defendant.
-----X

Plaintiff, Vinik Marine, Inc., (hereinafter "Vinik") by its attorneys, Bennett, Giuliano, McDonnell & Perrone, LLP, complaining of Ironhead Marine, Inc., (hereinafter "Ironhead") alleges:

1. That at all time herein mentioned, Plaintiff Vinik Marine, Inc. was, and still, is a domestic corporation with its principal place of business in Keyport, New Jersey.

2. Upon information and belief, that at all times herein mentioned, defendant Ironhead was, and still, is a corporation duly organized and existing under and by virtue of the laws of Ohio with an office at Toledo Shipyard, 2245 Front Street, Toledo, Ohio.

3. This is a case of Admiralty and Maritime jurisdiction, as herein move fully appears, and is an Admiralty and Maritime claim within the meaning of Rule 9(b) of the Federal Rules of Civil Procedures.

4. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 1331, 1332, and 1333 by virtue of the matter being a maritime claim between diverse parties.

5. Venue is based upon the plaintiff's principle place of business and where the operative facts all occurred.

6. From November 13, 2008 through December 18, 2009, the Barge Exiderdome No. 1 (hereinafter "Vessel") was under arrest pursuant to a writ of arrest filed by Ironhead.

7. From November 13, 2008 to January 26, 2009, at the express direction of the U.S. Marshal, Vinik was required to provide *custodia legis* services to the Vessel.

8. From November 13, 2008 to January 26, 2009, Vinik attended to the Vessel and incurred *custodia legis* expenses and administrative costs totaling \$89,553.17.

9. On January 26, 2009 Vinik was substituted as the custodian instead of the U.S. Marshall at the request of Ironhead. Ironhead's legal counsel negotiated a daily custodian rate with Vinik. The rate charged by Vinik was less than the rate charged by the U.S. Marshall and the other quotes received by Ironhead.

10. From January 26, 2009 to December 31, 2009 Vinik acted as the custodian and incurred additional *custodia legis* cost of \$360,000.

11. From November 19, 2008 to December 31, 2009, Vinik, Inc. performed certain work, labor, and services for the benefit and at the request of Ironhead consisting of maritime custodial services and furnishing necessary materials incidental thereto for the reasonable value of \$449,553.17.

12. To date, Vinik, Inc has been paid \$78,400.

13. Vinik has demanded that the balance due of \$371,153.17 be paid, but no part thereof has been paid, and there is now due and owing from Ironhead to Vinik the sum of \$371,153.17 with interest.


14. Demand for payment has been made to Ironhead Marine for payment of the amount due, but no part thereof has been paid.

WHEREFORE, Vinik Marine, Inc. prays that it may have the following relief:

1. That judgment in the amount of \$371,153.17 be entered in favor of Vinik Marine, Inc. and against Ironhead Marine, Inc. together with interest, cost, and expense; and,
2. For such other further relief that the Court deems just.

Dated: New York, New York
April 14, 2010

Bennett, Giuliano, McDonnell & Perrone, LLP
Attorneys for Plaintiffs
Vinik Marine, Inc.



William R. Bennett, III
494 Eighth Avenue, 7th Floor
New York, New York 10001
Telephone: (646) 328-0120
Facsimile: (646) 328-0121
wbennett@bgmplaw.com

TO: Ironhead Marine, Inc.
Toledo Shipyard
2245 Front Street
Toledo, Ohio